In **Connecticut**, the Commission required bill and keep for up to eighteen months, subject to a future evaluation of the relative balance of traffic.[93]

In **Arizona,** the Commission has issued a recommended decision which would implement bill and keep for three years.[94]

In **Michigan**, the Commission adopted a usage-sensitive compensation rate, but provided that the rate would not be imposed unless traffic was out of balance by more than 5%.[95]

In **Pennsylvania,** the Administrative Law Judge recommended the use of bill and keep,[96] and the Commission is continuing to consider the issue, with ILECs and CLECs interconnecting pursuant to escrow agreements in the meantime.

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93. *See, e.g.*, 47 U.S.C. §271(c)(1)(A)., Docket No. 94-10-02.

94. Arizona Corporation Commission, Rules for Telecommunications Interconnection and Unbundling, Order, Decision No. 59483, (Jan. 11, 1996), Dkt. No. R-0000-96-001.

95. City Signal Inc., 159 PUR 4th 532 (1995).

96. The Administrative Law Judge heard testimony on a variety of interim interconnection methods, including usage-sensitive methods. The Judge found "bill and keep" to be the most efficient and simplest interim interconnection method. *See* Application of MFS Intelenet of Pennsylvania, Incorporated for a certificate of public convenience and necessity in order to operate as a local exchange telecommunications company in the areas served by Bell Telephone Company of Pennsylvania within the Philadelphia and Pittsburgh LATAs, and to establish specific policies and requirements for the interconnection of competing local exchange networks, Pennsylvania Public Utility Commission Docket No. A-310203F0002 (Initial Decision, June 6, 1995).

In **Florida**, the Commission has adopted a bill and keep arrangement.[97]

C. Bill and Keep Is Affirmatively Endorsed By the 1996 Act. (NPRM ¶¶227-229)

TCG recommends that the Commission initially establish a bill and keep Transport and Termination mechanism until such time as specific just and reasonable rates can be determined for each interconnecting carrier, based on a showing of the "additional costs" attributable to each carrier. During this interim initial period, bill and keep clearly satisfies the 1996 Act's requirements that rates be just and reasonable. If there was ever any doubt that the mutual exchange of traffic, or bill and keep, was a viable and legitimate means of compensation for the Transport and Termination of traffic, the 1996 Act has put it to rest. Indeed, bill and keep is the only expressly acknowledged Transport and Termination mechanism condoned by the 1996 Act. Section 252(d)(2)(B) unambiguously

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97. *Resolution of Petitions to Establish Nondiscriminatory Rates, Terms and Condition for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.162, Florida Statutes*, Docket No. 950985-TP, Order No. PSC-96-0445-FOF-TP, (March 29, 1996). (Attachment F hereto.) Prior to the Commission's decision, TCG and BellSouth had agreed to a reciprocal compensation arrangement which functions from a financial standpoint as an approximation of bill and keep. Under this arrangement, the maximum amount of traffic that can be subject to interconnection payments from one carrier to another carrier is 5% of the lower amount of traffic passed between the two companies. For example, if in a given month one carrier passed 100,000 minutes of use to the other carrier, which in turn passed 200,000 minutes back to it, the amount of traffic subject to compensation would be limited to 5,000 minutes (5% of 100,0000 minutes). The BellSouth arrangement is not optimal, however, because it still requires measurement of traffic, and therefore is not as economically efficient as it should be due to the added and unnecessary costs associated with usage measurement.

recognizes bill and keep as a compensation arrangement that is completely consistent with the 1996 Act:

> This paragraph shall not be construed -- (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or (ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

TCG is pleased that the Commission appears to reject the strained interpretations advanced by some parties that the 1996 Act only allows bill and keep where both parties "waive" the right to any alternative compensation.[98] For example, Ameritech has argued in at least one state[99] that the state utility commission is not allowed under the 1996 Act to mandate bill and keep unless Ameritech voluntarily agrees to bill and keep in negotiations.

But, at the same time, TCG is concerned that the Commission appears to believe that bill and keep should only be permitted under the 1996 Act if traffic is in balance and if the costs incurred by interconnecting carriers are identical,[100] conditions that cannot be found anywhere in the plain language of the 1996 Act.

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98. NPRM at ¶ 243.

99. Brief of Ameritech Wisconsin, Mutual Compensation Attachment at 3, *Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin*, Case No. 05-TI-138 (Public Service Commission of Wisconsin).

100. NPRM at ¶ 243.

The statute clearly *requires* that Transport and Termination rates must be based on the "additional costs" of terminating a particular carrier's traffic. Balanced traffic is not an appropriate proxy for "balanced costs" because each carrier has different costs, and the relative balance of traffic does not bear any relationship to the "additional costs" that will be incurred by the ILEC.

The "reciprocal obligation" that is imposed is the obligation to terminate the other carrier's traffic, not the obligation to incur identical costs on behalf of each other. If the Commission were to adopt an "identical costs" standard, the plain language of the 1996 Act would be undermined, since it is not realistic to expect that costs and demand will ever be in perfect balance.[101] Moreover, the concept that bill and keep represents a form of compensation -- without regard to the level of traffic or relative cost per unit -- has been recognized by several state commissions.

For example, in its interconnection order, the Washington Utilities and Transportation Commission ("WUTC") elaborated on how carriers are compensated for the costs of interconnection using a bill and keep structure. The WUTC stated:

> There is a reciprocal exchange of traffic [using bill and keep] in which each company receives something of value . . . Bill and keep is more consistent

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101. Moreover, given the fact that ILECs have already sized their networks to accommodate all of the traffic flowing into and out of their offices, arguably they will incur no additional costs for termination of new entrants' traffic, regardless of the relative amounts of traffic flowing between the networks. Therefore, the Act's allowance of "mutual recovery of costs through the offsetting of reciprocal obligations" may be the only reciprocal interconnection arrangement that comports with the pricing standards of the 1996 Act.

> with the structure of cost occurrence than are the access charges that the incumbents proposed . . . The principal cost of terminating calls relates the provision of the line to the subscriber's premise. The cost of this line is largely insensitive to the volume and duration of calling . . . It is simply wrong to suggest that the bill and keep procedure means that calls are being terminated for free. *The termination function is paid for, not by the originating company, but by the end-use customer in his flat monthly charge. That charge covers all access to and from the public switched network. Under bill and keep a company is fully compensated for most call terminations by its own customers.*[102]

The Commission is free to adopt a bill and keep compensation mechanism consistent with the pricing standards set forth in the 1996 Act.

D. Bill and Keep is the Most Reasonable and Efficient Transport and Termination Arrangement. (NPRM ¶¶ 239-243)

In evaluating any proposed mutual compensation arrangements for compliance with §252(d)(2), and establishing "preferred outcomes,", the Commission must ensure that the arrangements will encourage the development of facilities-based local exchange service competition. The Commission's preferred outcomes should::

- o Encourage economically viable facilities-based competition;

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102. Washington Utilities and Transportation Commission, *Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, in Part*, (October 31, 1995), Dkt. No. UT-941464, at 36-37. (emphasis added) *See also Oregon NPRM on Interconnection*, Dkt. No. FCC 96-98, Order No. FCC 96-182 (Oregon Public Utility Commission); *Rules for Telecommunications Interconnection and Unbundling*, Arizona Corporation Commission Order, Decision No. 59483, (January 11, 1996), Proposed Rule R14-2-1303; *Utah Interconnection Docket*, Dkt. No. 95-2206-01 (Utah Public Service Commission); Florida Public Service Commission, In Re: Resolution of Petition(s) to Establish Nondiscriminatory Rates, Terms, and Conditions for Interconnection, Dkt. No. 950985-TP, (March 29, 1996), Order No. PSC-96-0445-FOF-TP.

- o Be administratively efficient;
- o Minimize competitive distortions; and
- o Minimize carrier conflicts.

Non-usage-sensitive compensation arrangements such as bill and keep -- as opposed to usage-sensitive compensation arrangements -- best satisfy these objectives, as explained below.

Economically Viable Facilities-Based Competition

In developing an economically viable compensation mechanism, the Commission must consider the significant imbalance in the "mutual dependence" of CLECs and ILECs. While the Commission has recognized that significant imbalance in the relative bargaining power of the CLECs and ILECs, the difference in relative dependence is even greater. Indeed, as the competitive local industry has developed, it has, ironically, become even more dependent on the ILEC. For example, when Competitive Access Providers ("CAPs") began they were private line and special access carriers whose services were largely independent of the ILEC and, because they were private line or special access type services, did not necessarily even need to interconnect with the ILEC network. Over time, the advent of collocation arrangements opened up the opportunity for composite private line services to be offered, but at the same time increased the CAP's dependence on the ILEC. Now, as competitors begin to provide CLEC services, the degree of dependence on the ILEC has grown exponentially, to a point where virtually every switched call that comes into or leaves a CLEC network is critically dependent on the technical and economic terms for interconnection with the ILEC. That dependence will continue to grow as CLEC businesses develop in the future. Significantly, competition is illusory when competitors are "dependent" on monopoly providers; indeed, the intent of the 1996 Act is to neutralize the adverse consequences of such dependence as much as possible, and the Commission must aggressively implement this intent.

Simple mathematics demonstrates this dependence. Even if a CLEC succeeded in attracting customers that equaled 5% of the subscriber lines served by the ILEC, virtually all of the local calls made by the CLEC's customers will terminate on the ILEC's network. Conversely, only a tiny percentage of calls made by the ILEC's customers will terminate on the CLEC's network. Clearly, any imbalance in compensation payments will be insignificant to the ILEC, but could be devastating to the CLEC.

For example, under a usage-sensitive compensation arrangement, an imbalance in traffic can lead to high payments between the carriers, particularly in the period before true local number portability becomes available. Since very little of the ILEC's traffic will be subject to the compensation agreement, the impact of an imbalance on the total profitability of the ILEC would be essentially invisible. By contrast, virtually all of the CLEC's local business will be subject to the compensation agreement, the impact on it would be substantial. Bill and keep eliminates such risks, and thus best ensures that there is an economically viable opportunity for facilities-based competition to develop.

Administrative Efficiency

Bill and keep is certainly the simplest arrangement to administer and bill. It avoids the need for the construction of complicated usage measurement and billing systems which are required where per-minute charges are involved. Evidence in some states has suggested that the costs of the billing systems to assess such per minute charges roughly equal the costs of the interconnection itself, meaning that the decision to use a per-minute charge will double the costs of the interconnection service.[103] Such an expenditure provides no public benefit, and will certainly make the costs of basic local services higher than they should be.[104] A capacity based charge also avoids the unnecessary costs associated with the need to collect usage information.

Minimize Competitive Distortions

Bill and keep allows service providers to design their local service offerings without being tied to or constrained by their interconnection arrangements. A

103. *See* Washington Utilities and Transportation Commission, *Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling and Granting Complaints in Part*, Docket No. UT-941464, issued October 31, 1995; *Oregon Public Utilities Commission, Applications of Electric Lightwave, Inc. MFS Intelenet of Oregon, Inc., and MCI Metro Access Transmission Services, Inc.*, Order No. 96-021 (Jan. 12, 1996), Dkt. Nos. CP-1, CP-14, and CP15.

104. *See* WUTC Decision (the additional costs associated with measured use measuring and billing could lead to increased flat-rate charges for local service).

usage-sensitive interconnection arrangement, by contrast, transforms a competitor into a "sales agent" for the ILEC, as it will get a "cut" of every call made by the CLEC's customers. Usage-sensitive plans will also inhibit a CLEC from offering flat rate options since the carrier will face a real risk of losing money on such customers. The Washington Utilities and Transportation Commission recognized this very point in determining that a bill and keep arrangement was preferable. It noted that a measured-use compensation structure could undermine the state's policy of providing a flat-rated local service option, and thus could represent a price squeeze that could "price new entrant ALECs out of the market for flat-rated local service" and thus "throttle the nascent competition in the local exchange market."[105] The Commission's interconnection policy should not preclude CLECs from a realistic opportunity of offering the predominant form of rate arrangement -- flat rated charges -- in use in large portions of the local exchange services market. A *usage-sensitive compensation arrangement would be preclusive in its effect,* while bill and keep would not.

Usage-sensitive interconnection arrangements can also distort the market by creating incentives for non-economic calling or network configurations, motivated solely by the desire to take advantage of inefficiencies or arbitrage opportunities inherent in the usage-sensitive compensation arrangement. For example, a usage

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105. *See* Washington Utilities and Transportation Commission, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling and Granting Complaints in Part, Docket No. UT-941464, issued October 31, 1995, at 28.

based compensation charge can create similar arbitrage opportunities as are encountered in the international telecommunications marketplace, where "call back" services exist solely to take advantage of artificial pricing conditions in the marketplace. Usage based interconnection arrangements could create incentives for CLECs to artificially stimulate incoming calling (where the usage based interconnection charge exceeds the retail rate), just as high international calling rates create incentives to engage in call back arrangements. High usage based charges could also distort the market by creating a "land rush" for customers with high incoming call volumes, in order to obtain the associated interconnection revenues. With usage-insensitive compensation arrangements like bill and keep, such arbitrage opportunities do not exist, and consequently interconnection charges cannot distort the market. By contrast, bill and keep places the incentives where they belong -- on satisfying the LEC's customers, since that is where their revenues must come from.

Minimize Carrier Conflicts

An issue related to administrative simplicity is whether the compensation arrangement will minimize conflicts between the carriers. To the extent that the compensation arrangement creates tensions between the affected carriers, and economic "win-lose" situations, it will engender conflicts, which will inevitably lead to demands for regulatory intervention. To the extent that the Transport and Termination arrangement minimizes the potential for carrier conflicts, it will reduce the potential demands on the Commission's resources to act as a referee or arbitrator, while simultaneously reducing the burden on small carriers to commit time, energy and scarce resources to the economically unproductive exercise of "battling" the ILEC over its interconnection charges.

Any usage based compensation arrangement will inevitably create disputes between the carriers, as to whether the traffic measurements are accurate, whether the carriers have properly rendered bills, and whether the rates are being applied correctly. By contrast, a bill and keep arrangement eliminates billing and monitoring requirements entirely, and with them the potential for carrier disputes. A capacity based charge similarly reduces the possibility for such disputes.

Bill and keep, by eliminating the potential for carrier conflicts, actually does much more. Bill and keep places the marketplace emphasis where it belongs -- it tells local service providers of all stripes to build revenues by providing good service to their retail customers, since they will be the primary source of their local revenues. In contrast, usage-sensitive Transport and Termination arrangements will place the emphasis on obtaining revenues from competitors through "gaming" the regulatory process, encouraging economically inefficient services or arrangements simply to reap windfalls from interconnection revenues, or using arbitrage arrangements to artificially stimulate the production of incoming traffic to create uneconomic (but valuable) interconnection revenues.

E. CLEC Interconnection Will Impose Few if Any "Additional Costs" on ILEC Networks. (NPRM ¶ 226)

The transport and termination of calls originated on CLEC networks will impose few if any additional costs on the ILEC. Wireline local exchange competition is likely to result, for the most part, in the diversion or rearrangement of existing calling. The fact that a customer has local telephone service provided over a CLEC's facilities does not mean that customer now knows more people to call or has a greater need to call -- it just means the customer has a different originating carrier to use to call the people they are likely to talk with anyway. Unless callers make substantially more calls or calls to new parties as a result of the CLEC's entry into the market, the fact that the calls are now originated by a CLEC rather than the ILEC does not impose any additional costs of transport and termination on the ILEC's network.

There are several reasons that *no* additional costs will be imposed on the ILEC due to CLEC interconnection. One reason has to do with the way the ILEC's network is engineered. ILEC end offices are already designed to handle the peak busy hour traffic load (both originating and terminating) of the subscribers served by that office. If those subscribers receive calls from customers served by CLECs, the fact that those calls now come from outside the ILEC's network does not impose any additional costs for termination at the ILEC's end offices.[106] That is because the ILEC's end office is already sized to serve the expected busy hour demands of those subscribers, and unless the existence of CLECs substantially changes those calling patterns to create a new and higher peak calling period the ILEC will not incur any additional end office costs in serving those customers.[107]

Indeed, CLEC networks are unlikely to impose *additional* costs on the ILEC -- they are in fact more likely to *reduce* the ILECs' costs. In a monopoly situation, 100% of the local calls will be handled entirely on the network of the ILEC -- in other words, the ILEC will generally utilize two of its end office switches to handle every call. Each time a CLEC terminates a call on its network, the system

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106. For example, assume that an ILEC's end office now has 200 DS1 ports to handle the incoming and outgoing traffic of its users. Certainly the placing of calls to or from customers served by CLECs to or from the ILEC's customers may require that some of those 200 ports be connected to the CLEC network. That does not, however, mean that the ILEC will experience any increase in costs. Unless the CLEC traffic produces a significant change in the busy hour profile at the ILEC end office, the ILEC will not need to add any trunks to that office. Since call completion services are incurred in relationship to the installation of new capacity (not based on usage), the ILEC has not had to spend any additional capital at that end office, and hence has not incurred any additional costs. Assuming that the relative peak load at the office is not materially affected by the CLEC traffic, the existing 200 DS1 ports will be sufficient to handle the traffic load.

107. Similarly, the CLEC's use of ILEC tandems for Transport and Termination may not impose additional costs, provided that the CLEC's proportionate use of tandem facilities tracks with the ILEC's use. To the extent that a CLEC does, in fact, use more tandem facilities than the ILEC, then there may be "additional costs" that could be demonstrated and an additional charge, beyond bill and keep, would be appropriate. Because each CLEC will have a different propensity to utilize the ILEC's tandems at different peak hours, tandem rates based on "additional costs" would have to be calculated individually for each CLEC.

demands on the ILEC network will be reduced since the CLEC is incurring the termination costs.

ILEC costs will in fact decline even further in the future. As CLECs grow, a greater proportion of the calls of those customers will be completed *entirely* on those non-ILEC networks. Since that traffic will never touch the ILEC's network, it will free up ILEC investment in the peak busy hour so that the network can handle new, incremental traffic without the investment of new capital by the ILEC.

Accordingly, when the impact of CLEC competition on ILECs is considered, it is clear that bill and keep is the optimal solution -- for the short *and* long term. No other solution is as administratively simple and economical to implement, as readily avoids the possibility that the ILEC will abuse its position in the marketplace, and recognizes that the "additional" costs imposed on ILECs by CLECs are likely to be negligible if not nonexistent. Under such circumstances, "zero" is a reasonable approximation of the negligible or nonexistent additional costs that will be incurred, and its adoption by the Commission is fully consistent with the 1996 Act.

F. The Commission Should Adopt Bill and Keep as an Interim Transport and Termination Arrangement (NPRM ¶ 244).

The Commission asks whether it should adopt bill and keep (or some other arrangement) as an initial or interim compensation approach, while negotiations or arbitrations are ongoing. For the reasons given above, TCG believes that bill and keep is the best solution, whether for the short or long term. However, it is certainly appropriate for the Commission to implement bill and keep for the period within which negotiations and related proceedings are ongoing. No other solution is as readily implementable or as fair and reasonable to all parties. Accordingly, TCG recommends that the Commission adopt bill and keep as the initial Transport and Termination arrangement ("preferred outcome"), to remain in effect unless an alternative approach is voluntarily agreed to, or until a reasonable and auditable demonstration of the "additional costs" of terminating a particular CLEC's traffic has been made by the ILEC to the satisfaction of the state or federal Commission charged with the responsibility to review such a showing.

IX. ARBITRATION PROCESS (NPRM ¶¶ 264-268).

As the Commission recognizes, the 1996 Act mandates that the Commission assume the responsibility for implementing an interconnection agreement if a state commission fails to carry out its statutory obligation to do so. Under such circumstances, the 1996 Act requires the Commission to issue an order preempting the state's jurisdiction within 90 days after it is notified of the state's failure to act.[108] TCG believes that the 1996 Act establishes clear guidelines for determining what constitutes a state's "failure to act" which would trigger the Commission's responsibilities concerning interconnection agreements. Section 252(b)(4)(C) requires that a state "shall . . . conclude the resolution of any unresolved issues not later than nine months after the date on which the local

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108. *See* §252(e)(5).

exchange carrier received the request under this section." Sec. 252(3)(5). Thus, if the FCC is notified that a state commission has not concluded all unresolved interconnection issues within the statutory time frame (nine months), the state has failed to act and, therefore, the FCC's preemption obligations and arbitration responsibilities should begin.

TCG strongly recommends that the Commission adopt arbitration rules to implement §252(e)(5) of the 1996 Act that will expedite the arbitration process and promote the overarching goals of the 1996 Act.[109] To timely and efficiently resolve interconnection issues, the Commission's rules should limit the arbitration proceedings only to the parties that will sign the agreement, and should prohibit other parties from intervening. Allowing unfettered intervention in arbitration proceedings will unnecessarily impede the arbitrations process and bog down the Commission with irrelevant information.

It is extraordinarily important for the Commission to recognize, and respect, the fact that each competitive telecommunications provider has unique interconnection requirements. Some companies, such as the IXCs, will be primarily resellers of local ILEC services, and have a particular set of interconnection "desires." Other carriers, like TCG, are facilities-based carriers, and their business plans dictate an entirely different set of requirements and priorities. *The*

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109. *See, e.g.,* Staff Reply Comments, *Implementation of the Federal Telecommunications Act of 1996 in Wisconsin*, Public Service Commission of Wisconsin, Dkt. No. 05-TI-140.

Commission must adopt arbitration rules that respect, permit and encourage the development of differing interconnection arrangements. A "one size fits all" approach could result in the discouragement of entire classes of carriers or segments of the market.

Thus, while technical standards of interconnection may be similar, the kinds of interconnection agreements necessary for their businesses in each case will differ. Hence, input from carriers with different business objectives will not provide the Commission with useful information, and could jeopardize the business plans of other carriers whose plans differ.[110] Moreover, §252(i) provides that each final interconnection agreement will be publicly available so that any interested communications provider can opt for the same agreement if it so chooses, and thus is not disadvantaged if it does not have standing to intervene in another carrier's arbitration proceeding.

TCG further recommends that the Commission's arbitration rules specify that arbitrators must choose one of the two alternative approaches offered by the parties, sometimes called "best and final" arbitration.[111] Such a mandate will

110. In addition, the 1996 Act provides that a non-petitioning party may submit any additional information to the Commission within 25 days after receipt of a petition for approval of an interconnection agreement. §252(b)(3). Therefore, potential intervenors have a separate means for providing the Commission with relevant information.

111. The arbitrator's choice between the two "best and final" offers would, of course, need to be correlated with the Commission's preferred outcomes. Accordingly, the arbitrator would be required to accept a "best and final" offer that equalled the Commission's preferred outcome, unless the party entitled to the

encourage the parties to offer the arbitrator a more reasonable interconnection recommendation. If a party insists on maintaining an extreme position -- for example, a high minutes-of-use compensation mechanism, that party runs the risk that the arbitrator will choose the opposing party's recommendation. Therefore, an "either or" structure, places pressure on the parties to compromise their positions to one that may be satisfactory to both sides. On the other hand, if an arbitrator may design an arrangement that incorporates aspects of each proposal, the parties recommendations to the arbitrator are more likely to be far more extreme in anticipation that the arbitrator will adopt some compromise position.

The Commission should also adopt rules which permit a party to use commercial arbitrators, without regard to state commission statutes or rules that would otherwise limit their use. The recommendations of these commercial arbitrators can then be subject to final Commission orders. The use of commercial arbitrators will allow parties to seek the assistance of trained, impartial and experienced arbitrators, rather than Commission staff or Commissioners who may have no training in the arbitration process and may have already taken positions (publicly or privately) on the subject of the arbitration. Moreover, many state commission rules and statutes do not incorporate processes for arbitration or do not contemplate the use of commercial arbitration. By establishing a national rule on the use of commercial arbitration, state commissions can feel free to use this

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preferred outcome agreed to allow the arbitrator to select a different outcome.

type of arrangement without concern that their local rules or statute would limit or forbid this process. And by allowing for the use of commercial arbitrators, the Commission will give parties a better opportunity to obtain individually negotiated arrangements since they will not be constrained to the use of limited PUC staff or forced to participate in "joint" or multi-party arbitrations, which would limit their ability to achieve more customized results.

TCG also recommends that the Commission's rules should make clear that arbitration would include discovery between the parties. Arbitration is not a paper process, but more closely resembles an adjudication. In fact, it can be argued that arbitration is more similar to adjudication than informal processes like negotiations. Discovery between the parties, moreover, will provide the Commission with information that will allow fair and timely decision making. Unlike litigation, where discovery is a tool for the parties to advance their case, here discovery is essential as it will enable the Commission to conduct its statutory arbitration process by providing useful information.

The Wisconsin Commission Staff recently recommended rules that provide some useful guidelines. TCG recommends that the Commission consider the proposed rules submitted to the Wisconsin Commission by its staff as a starting point for adopting its own arbitration rules.[112]

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112. Staff Reply Comments, *Implementation of the Federal Telecommunications Act of 1996 in Wisconsin*, Public Service Commission of Wisconsin, Dkt. No. 05-TI-140.

Once the Commission has arbitrated an agreement, TCG believes that the Commission should retain jurisdiction over the matter rather than refer it back to the state commission. TCG has serious concerns about returning jurisdiction of an agreement back to a particular state that has failed to meet its statutory obligations under the 1996 Act. The FCC could not have initially preempted the state's authority had the state acted within the guidelines set forth in §252(b)(4)(C). Under such circumstances, the FCC should not risk returning jurisdiction to a state that has demonstrated an ineptitude for implementing interconnection agreements. Since the state has by definition failed to meet its 1996 Act obligations, there is no basis to presume that it will ensure that the terms and condition of the agreement are met.

XIII. CONCLUSION

For the reasons stated herein, TCG recommends that the Commission adopt specific, quantifiable rules or "preferred outcomes", that will foster the goals of the 1996, and, in particular, encourage the development of facilities-based local exchange competition. As the Commission accurately acknowledges, the 1996 Act imposes obligations and responsibilities on telecommunications carriers, particularly incumbent local exchange carriers ("ILECs"), designed to open monopoly local telecommunications markets to competitive entry. The specific obligations that the Commission adopts in this proceeding will determine to a large degree, the level of successful competitive entry that will ultimately result from the

1996 Act. Thus, it is the Commission's ultimate responsibility to ensure that the goals of the 1996 Act are achieved as rapidly and as easily as possible.

The guiding principal -- the question the Commission must ask as it makes each decision -- is whether its proposed rule will help the cause of facilities-based local competition by equalizing bargaining positions. Unless the Commission can answer an unqualified yes to that question, it must return to the drawing board.

The need for specific and unarguable rules -- particularly in the area of pricing standards -- is paramount. It has been TCG's experience that where there is a lack of specificity regarding interconnection standards or the rights of interconnectors, the ILECs succeed in delaying -- if not stopping entirely -- the implementation of interconnection arrangements necessary for the effective, efficient development of facilities-based local exchange competition. TCG's experience and observations, as it has attempted to enter the local exchange market nationally, strongly indicates that any ambiguities will be manipulated by the ILECs to frustrate the development of local competition. On the other hand, where states have adopted specific rules or guidelines, competitors have more quickly entered the market. The Commission must, therefore, establish firm "preferred outcomes" that give facilities-based carriers the necessary negotiating "currency" to obtain effective interconnection arrangements.

Respectfully submitted,

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APPENDIX A: TCG'S PROPOSED RULES AND PREFERRED OUTCOMES

TCG Proposed Rule	Explanation
I. Interconnection and Interconnection Agreements	
A. Incumbent local exchange carriers (ILECs) shall interconnect competitive local exchange carriers (CLECs) to their networks under a mutually agreed upon arrangement that must meet the "Preferred Outcomes" provided herein, unless such Preferred Outcomes are waived by the CLEC. CLECs shall not be subject to the requirements imposed on ILECs by these rules or the 1996 Act unless specifically stated herein or voluntarily agreed to by the CLEC.	Derived from Arizona Proposed Interconnection Rules, Dkt. No. R-0000-96-001, Decision No. 59483. Preferred outcomes concept based on California, New York Commission decisions. Limitation of rules to ILECs derived from 1996 Act. **Rationale:** Establishing a "Preferred Outcomes" as a minimum interconnection standard helps equalize the bargaining power between the parties and encourages the 1996 Act's preference for negotiated agreements.
B. Preferred Outcome: A telecommunications carrier may elect to interconnect with the ILEC under a physical collocation arrangement, a virtual collocation arrangement (where the interconnector prefers such an arrangement or where the State Commission has determined that physical collocation at a particular wire center is technically impractical or because adequate space is unavailable), or a mid-span meet point arrangement.	Based on §252(c)(2). **Rationale:** Requiring highly flexible interconnection arrangements fosters the 1996 Act's goal to promote facilities-based competition.
C. Preferred Outcome: If a CLEC elects to interconnect with an ILEC under a mid-span meet point arrangement for the Transport and Termination of traffic subject to reciprocal compensation, each carrier will be responsible for one-half of the construction costs of the mid-span meet point facility up to three miles in length regardless of where the meet point is located, provided that no carrier shall be responsible for the construction of more than 1.5 miles.	Language based on the cost sharing rules adopted by Arizona, with the three mile rule derived from the MFJ. **Rationale:** Such a rule encourages interconnection at *any* point, thus promoting facilities-based competition, diversity, and disaster avoidance. The rule also equalizes the burden of building such facilities. The three mile limit on mid-span meets encourages CLECs to deploy their own transmission facilities, thereby increasing diversity and disaster avoidance.

TCG Proposed Rule	Explanation
D. Preferred Outcome: CLECs shall have the option to elect two-way trunking arrangements from the ILEC for the Transport and Termination of traffic subject to reciprocal compensation. If traffic terminated on such trunks is not subject to reciprocal compensation, each carrier shall submit to the other on a quarterly basis percent local usage ("PLU") data for the traffic that the reporting carrier terminates on the other carrier's network.	Derived from CPUC interconnection rules. Decision No. 95-12-056, Dec. 22, 1995. **Rationale:** A two-way trunking option encourages facilities-based competition and efficiency.
E. Preferred Outcome: ILECs are required to provide CLECs with non-discriminatory interconnection to all essential elements including, but not limited to, signaling systems and associated databases, directory assistance database listings, 800 LIDB and AIN databases, CMDS hosting, Busy Line Verification and Busy Line Interrupt operator services, distribution of telephone directories, inclusion of carrier information in the Call Guide section of the directory, and 911/E911. ILECs shall provide essential elements under reasonable and nondiscriminatory terms and conditions.	Derived from CPUC Interconnection Rules, Decision No. 95-12-056, Dec. 22, 1995. **Rationale:** Such a requirement assures that competitive telecommunications carriers have technical and operational interconnections in place with the ILECs that are similar in nature to the existing interconnection arrangements currently in place in the ILEC industry.
F. All telecommunications carriers shall have a duty to correct errors, support network management in a way that promotes network integrity, and prevent fraudulent use of the public switched network	Derived from Arizona Proposed Interconnection Rules, Dkt. No. R-0000-96-001, Decision No. 59483, Jan. 11, 1996. **Rationale:** Such a requirement assures that competitive telecommunications carriers have technical and operational interconnections in place with the LECs that are similar in nature to the existing interconnection arrangements currently in place between the LECs and other independent local telephone companies

TCG Proposed Rule	Explanation
G. Telecommunications carriers shall have access to 911/E911 under the same terms and conditions as the ILEC. ILECs shall allow telecommunications carriers to connect to the LEC 911/E911 tandems, routers, and other switching points serving the areas in which the carrier provides local exchange telecommunications services, for the provision of 911/E911 services and for access to all sustaining Public Safety Answering Points (PSAPs).	Derived from CPUC Interconnection Rules, Decision No. 95-12-056, Dec. 22, 1995. **Rationale:** Such a requirement assures the integrity of emergency calling services in a more competitive environment by providing that competitive telecommunications carriers have technical and operational interconnections in place with the LECs that are similar in nature to the existing interconnection arrangements currently in place between the LECs and other independent local telephone companies
H. ILECs will not use information obtained from an interconnecting carrier in connection with establishing and maintaining the 911/E911 and directory assistance databases for any purpose not directly associated with the operation of the Public Safety network.	New Language **Rationale:** Such a requirement assures that competitive telecommunications carriers have technical and operational interconnections in place with the LECs that are similar in nature to the existing interconnection arrangements currently in place between the LECs and other independent local telephone companies
I. Preferred Outcome: ILECs and CLECs will each provide Transport and Termination and associated interconnections for 911/E911 traffic at no explicit charge.	New Language **Rationale:** 911/E911 are vital public interest services, not profit-making services. This rules recognizes that 911/E911 traffic falls under the rubric of "interconnection" and, therefore, is subject to interconnection requirements set forth in the 1996 Act.
J. ILECs shall provision 911/E911 trunks within 30 business days from the ordering date.	From CPUC Interconnection Rules, Decision No. 95-12-056, Dec. 22, 1995. **Rationale:** This rule helps expedite the full panoply of interconnection requirements and serves the public interest.
K. Symmetrical rights and obligations shall apply to ILECs and telecommunications carriers in the exchange of confidential information. Each party shall be responsible for designating which information it claims to be confidential.	Derived from CPUC Interconnection Rules, Decision No. 95-12-056, Dec. 22, 1995. **Rationale:** This rule assures that the confidential information exchanged between the parties will be protected.